IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. .....

THE ELECTRIC AUTO-LITE COMPANY, AND LOCAL 12, INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION OF THE ELECTRIC AUTO-LITE COMPANY FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

The Electric Auto-Lite Company respectfully petitions this Court for a Writ of Certiorari directed to the United

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States Court of Appeals for the Sixth Circuit, the court in which the record of this cause is now lodged.

The said record shows that this action was commenced before the National Labor Relations Board (hereinafter referred to as the "Board") upon complaints, issued by the Board against the said petitioner (hereinafter referred to as the "Company") and Local 12, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (hereinafter referred to as the "Union") charging the Company and the Union with unfair labor practices affecting commerce within the meaning of the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. Supp. IV, Sec. 141, *et seq.* (hereinafter referred to as the "Act").

The following steps occurred after the issuance of the complaints by the Board:

A. On December 29, 1950, the Board, with one of the four participating members dissenting, found that the Company, acting pursuant to its contract with the Union, discharged one of its employees, Melvin A. Eck (hereinafter referred to as "Eck"), because his membership in the Union had been terminated; that such termination was based upon some ground other than his failure to tender periodic dues or initiation fees uniformly required as a condition of retaining membership; and that the Company had reasonable grounds for believing that termination of Eck's membership was based on other grounds. The Board also found that the Union suspended Eck from membership and caused the Company to discharge Eck because he failed to pay certain charges of the Union; and that, by such conduct, the Union violated Section 8(b)(2) and 8(b)(1)(A) of the Act. The Board's order requires the Company to offer reinstatement to Eck. The order also requires the Company and

the Union, jointly and severally, to make Eck whole for any loss of pay he may have suffered by reason of his alleged wrongful discharge. (R. 76, 77.)

B. Pursuant to the provisions of Section 10(e) of the Act, the Board filed a petition in the United States Court of Appeals for the Sixth Circuit, on June 25, 1951, for enforcement of its order. (R. 1.)

C. On April 17, 1952, the United States Court of Appeals for the Sixth Circuit granted the Board's petition for enforcement of its order, with opinion, "for reason set forth in its (Board's) decision and order". (R. 281).

D. The Company and the Union filed petitions for rehearing and same were denied by the said United States Court of Appeals on May 13, 1952 (R. 295).

The questions presented by the petitioner for consideration by this Court are, briefly stated, as follows:

(a) Is the finding of the National Labor Relations Board that the Company had reasonable grounds for believing that Eck's membership in the Union was terminated for reasons other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership supported by substantial evidence on the record considered as a whole as required by Section 10(e) of the Act (29 U. S. C. Sec. 160(e))?

Petitioner contends that the answer should be "No".

(b) Does an employer have, from the single fact of monthly check-off of Union dues, reasonable grounds under Section 8(a)(3) of the Labor Management Relations Act (29 U. S. C., Sec. 158(a)(3)) for believing that Union membership was terminated for reasons other than the failure of an employee to tender periodic dues uniformly required as a condition of retaining membership, where the

Union has certified that the employee is delinquent in the payment of dues and said employee does not protest to the Company after receipt of notice of such certification?

Petitioner contends that the answer should be "No".

The reasons relied on for the allowance of the writ, briefly stated, are as follows:

(a) The Board's decision and order, which were affirmed by the United States Court of Appeals, would require the Company to verify the Union's certification that Eck had lost his membership in the Union because of the delinquency in the payment of his dues by demanding the privilege to inspect and audit of the Union's books and records in violation of the provisions of Sec. 8(a)(2) of the Act (29 U. S. C., Sec. 158(a)(2)).

(2) The decision of the United States Court of Appeals is in conflict with the following cases which hold, in substance, that meddling in Union affairs constitutes a violation of the provisions of the Act prohibiting "unfair labor practices"; and that employers may not inquire into the manner in which labor unions conduct their internal affairs: *N. L. R. B. vs. Eaton Mfg Co., Wilcox-Rich Div.*, 175 F. (2d) 292; *Ohio Power Company vs. N. L. R. B.*, 115 F. (2d) 839; *Atlas Underwear Company vs. N. L. R. B.*, 116 F. (2) 1020; *Press Co., Inc., vs. N. L. R. B.*, 118 F. (2d) 937, *certiorari* denied, 313 U. S. 595; *N. L. R. B. vs. Calumet Steel Div. of Borg-Warner Corp.*, 121 F. (2d) 366; *N. L. R. B. vs. Collins & Aikman Corp.*, 146 F. (2d) 454.

(3) The record does not contain substantial evidence to support the Board's finding that the Company had reasonable grounds for believing that Eck was suspended from Union Membership for reasons other that his failure to tender periodic dues uniformly required as a condition of retaining membership.

Your Petitioner believes that the judgments of the Board and the United States Court of Appeals are erroneous for the reasons stated above, and that the honorable Court ought to require this cause to be certified to it for review, consideration, and final determination, as provided by law.

This Court has jurisdiction by virtue of Title 28, U. S. C., Sec. 1254.

A certified copy of the transcript of the record of the proceedings before the Board and the United States Court of Appeals is submitted herewith.

WHEREFORE, your Petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the seal of this Court directed to the United States Court of Appeals for the Sixth Circuit commanding said Court to certify under the seal thereof and send to this Court, on a day certain to be named, a full and complete transcript of the record and all proceedings before the Board and the said Court of Appeals, to the end that the judgment of the said United States Court of Appeals may be reviewed, considered and determined as provided by law, and that this honorable Court may correct the errors complained of herein by your Petitioner and reverse said judgment of the United States Court of Appeals for the Sixth Circuit, and remand said cause, and grant such other and further relief as from the nature of the case your Petitioner may be entitled to pursuant to law.

The Electric Auto-Lite Company, Petitioner.

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SUPPORTING BRIEF OF PETITIONER, THE ELECTRIC AUTO-LITE COMPANY

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I

STATEMENT OF CASE

On August 3, 1948, the Company and the Union entered into a collective bargaining agreement (hereinafter called "Labor Agreement") for a period of two years (R. 222). Said Labor Agreement contained, among other things, the following provisions (R. 224):

Article 23

Maintenance of Membership

Section 1. For the duration of this contract, it is agreed that all employees covered by the contract who are members of the Union in good standing at the execution of this contract, and employees who may thereafter become members, shall as a condition of employment, remain members of the Union in good standing as provided in the constitution and by-laws of the Union.

Before a dismissal becomes effective in the case of a member who is not in good standing because of delinquency in the payment of dues, the employee will be given an opportunity on the first occurence only to reinstate himself in good standing within two (2) weeks from the date of dismissal is requested by the Union.

Any request to the Company for dismissal shall contain a certification by the Union that the individual whose dismissal is requested was a member of the Union in good standing on the date of execution of this contract, or, became a member after the date of this contract.

In the event of any dispute under this Maintenance of Membership provision as to whether an individual was a member of the Union in good stand-

ing on the date of execution of this contract, or as to whether the individual became a member of the Union after the date of execution of this contract, the dispute will be submitted to the United States Conciliation Service and its opinion will be accepted by all parties as final.

Melvin A. Eck (hereinafter referred to as "Eck") was a member of the Union at the time that the said Labor Agreement was executed (R. 102, 103).

Pursuant to a request signed by Eck on September 1, 1947, the Company deducted $1.50 each month, together with certain assessments, from Eck's earnings (R. 103, 143, 234). The Company made regular monthly deductions beginning September 1, 1947, to and including the time he was discharged (R. 145), which sums were paid to the Financial Secretary of the Union (R. 143).

On January 12, 1949, the Union mailed the Company a letter requesting the dismissal of the individuals on an attached list under the Maintenance of Membership Clause of the Labor Agreement because of the delinquency in the payment of their dues (R. 226). Eck's name appeared on the list (R. 227).

On January 14, 1949, the Company wrote to Eck advising him of the Union's request for dismissal under the Maintenance of Membership Clause of the Labor Agreement because of the delinquency in the payment of his dues. The Company's letter to Eck pointed out the fact that two weeks' grace period in which to correct his delinquency started to run on January 12, 1949 (R. 235). The letter was delivered to Eck's home on January 15, 1949 (R. 106, 119, 120).

On January 19, 1949, the Company mailed a list to the Union indicating the employment status of the individ-

uals shown on the list enclosed in the Union's letter of January 12th. The Company's list indicated that Eck was actively employed (R. 229). The Company informed the Union that two weeks' notice letters had been mailed to the individuals whose employment status was shown as "Active" or "Laid Off" (R. 229, 231).

On January 26, 1949, the Union mailed the Company a list of names of employees who had not corrected the delinquency in the payment of their dues and referred the Company to the Union's letter of January 12, 1949, wherein the Union had requested the dismissal of these employees. Eck's name was on that list (R. 232).

Following the exchange of the aforesaid letters, Eck was discharged as of January 27, 1949.

Eck then filed charges of unfair labor practices with the Board; and on January 16, 1950, the Board issued formal complaints charging the Company and the Union with unfair labor practices affecting commerce within the meaning of the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C., Supp. IV, Sec. 141 *et seq.* (hereinafter referred to as the "Act") (R. 18, 21, 24).

On December 29, 1950, the Board, with one of the four participating members dissenting, found that the Company, acting pursuant to its contract with the Union, discharged Eck because his membership in the Union had been terminated; that such termination was based upon some ground other than his failure to tender periodic dues or initiation fees uniformly required as a condition of retaining membership; and that the Company had reasonable grounds for believing that termination of Eck's membership was on other grounds (R. 67, 88). The Board also found that the Union suspended Eck from membership and caused the Company to discharge Eck because he

failed to pay certain charges of the Union; and that, by such conduct, the Union violated Section 8(b)(2) and 8(b)-(1)(A) of the Act. The Board's order requires the Company to offer reinstatement to Eck. The order also requires the Company and the Union, jointly and severally, to make Eck whole for any loss of pay he may have suffered by reason of his alleged wrongful discharge (R. 75, 78).

Pursuant to the provisions of Section 10(e) of the Act, the Board filed a petition in the United States Court of Appeals for the Sixth Circuit for enforcement of its order (R. 1).

On April 17, 1952, the United States Court of Appeals for the Sixth Circuit granted the Board's petition for enforcement of its order, without opinion, "for the reasons set forth in its (Board's) decision and order" (R. 281).

The Company and the Union filed petitions for rehearing and same were denied by the said United States Court of Appeals on May 13, 1952 (R. 295).

II

SUMMARY

A. The following facts nullify the Board's findings that the Company had reasonable grounds for believing that Eck's membership in the Union was terminated for reason other than his failure to pay periodic dues uniformly required as a condition of retaining his membership in the Union:

1. There is nothing in the record which indicates that the Company had any knowledge as to the exact amount of the periodic dues uniformly required as a condition of retaining membership in the Union; and therefore the mere fact that the Company de-

ducted $1.50 each month from Eck's earnings and paid same to the Union pursuant to Eck's written request does not furnish any basis for the Board's finding.

2. At the time the Union requested Eck's dismissal, it certified, in writing, that Eck was delinquent in the payment of his dues.

3. The Company was prohibited by the Provisions of Section 8(a)(2) of the Labor Management Relations Act from demanding the privilege to inspect and audit the books and records of the Union for the purpose of ascertaining the status of Eck's dues obligations to the Union; and therefore the Company was compelled to rely on the Union's certification that Eck was delinquent in the payment of his dues.

4. Eck did not at any time protest to the Company the Union's certification that he was delinquent in the payment of his dues. From this fact the Company could only conclude that the Union's certification was correct.

5. The Company carefully followed a detailed procedure designed to avoid a discriminatory discharge before dismissing Eck.

B. The Board's finding is not supported by substantial evidence on the record as a whole as required by Section 10(e) of the Act.

III

ARGUMENT

Insofar as the Company is concerned the basic question presented is whether the Company had *reasonable grounds* for believing that employee Eck was suspended from the Union membership for reasons other than non-

payment of dues. The Company contends that this question must be answered in the negative. The question arises under provisions of Section 8(a)(3) of the Act (29 U. S. C., Sec. 158(a)(3)) which reads as follows:

"Section 8(a). It shall be an unfair labor practice for an employer—

(1) • • •

(2) • • •

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9(f), (g), (h), and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization* (A) if he has reasonable grounds for believing that such membership

was not available to the employee on the same terms and conditions generally applicable to other members, or (B) *if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership:*" (Italics ours).

Section 8(a)(3) permits a collective bargaining agreement to require union membership as a condition of employment but by proviso stipulates that non-membership shall not justify discharge if the employer has "*reasonable grounds*" for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

An examination of the record and of the brief for the National Labor Relations Board discloses that there was only one fact within the knowledge of the Company which could have furnished *reasonable grounds* to cause it to believe that membership was terminated for reasons other than the failure of Eck to tender periodic dues. That single fact was the check-off from Eck's earnings of $1.50 each month pursuant to the request signed by Eck on September 1, 1947. An examination of the written request, (R. 234), discloses that it made no reference to "regular dues," "monthly dues," "periodic dues" or even just "dues." The instrument merely gave the Company a revocable authorization to deduct the sum of $1.50 per month, together with specified assessments, and to pay the same to the Financial Secretary of the Union. It created no responsibility upon the Company to ascertain whether the amounts deducted were in full payment of Eck's obligations to the Union, or otherwise.

In an effort to protect itself under the Act, the Company insisted that whenever the Union requested the dismissal of an employee, the Union would be required to furnish the Company with a written certification to the effect (a) that the employee was a member of the Union in good standing on the date of the execution of the contract or became a member after that date, and (b) that the Union requested the dismissal of the employee under the Maintenance of Membership clause because of the delinquency in the payment of his dues. (R. 149, 153, 154, 194, 195, 212, 213.) Such a certification was furnished to the Company by the Union before Eck's dismissal (R. 226).

The record clearly shows other safeguards which the Company took to avoid wrongful dismissals. An orderly procedure was established to insure employees against discrimination (R. 139, 142, 148, 153, 194, 195, 212, 213). The procedure was strictly followed in Eck's case (R. 226, 227, 235, 106, 119, 120, 229, 233).

It was the Company's policy to tell its employees why they were being discharged (R. 153), and if any employee would raise a question about the alleged delinquency, the Company would bring the matter to the Union's attention (R. 133, 153). However, when Eck was discharged he did not at any time, or at any subsequent time, tell the Company that he disputed the fact that he was delinquent in the payment of his dues (R. 124, 125, 132, 135, 153). Eck also testified that he had never applied for reinstatement with the Company (R. 132).

The Company at all times maintained a "hands off" policy with regards to the internal affairs of the Union (R. 142, 154, 155, 162, 212). In doing so, it was complying with Section 8(a)(2) of the Labor Management Relations Act, 1947, 29 U. S. C. Sec. 158(a)(2) which reads, in part, as follows:

"(a) It shall be an unfair labor practice for an employer—

1. * * *

2. To dominate or interfere with the formation or the administration of any labor organization * * *."

It has been repeatedly held by the courts that meddling in Union affairs constitutes a violation of the National Labor Relations Act prohibiting "unfair labor practices", and that employers may not inquire into the manner in which unions conduct their internal affairs. *N. L. R. B. vs. Eaton Mfg. Co., Wilcox-Rich Div.*, 175 F. (2d) 292; *Ohio Power Company vs. N. L. R. B.*, 115 F. (2d) 839; *Atlas Underwear Company vs. N. L. R. B.*, 116 F. (2) 1020; *Press Co., Inc., vs. N. L. R. B.*, 118 F. (2d) 937, certiorari denied, 313 U. S. 595; *N. L. R. B. vs. Calumet Steel Div. of Borg-Warner Corp.*, 121 F. (2d) 366; *N. L. R. B. vs. Collins & Aikman Corp.*, 146 F. (2d) 454. The Company's determined effort to avoid intruding in the internal affairs of the Union is evident in the Record (R. 142, 154, 155, 162, 212).

The Board's decision and order, which were affirmed by the United States Court of Appeals for the Sixth Circuit, would require the Company to disregard the Union's certification that Eck had lost his membership in the Union because of the delinquency in the payment of his dues and instead demand the privilege to inspect and audit the Union's books and records in violation of Section 8(a)(2) of the Act. It is obvious that Congress did not intend that an employer should be placed in such an untenable position.

Turning now to the question of substantial evidence, the petitioner wishes to direct this honorable Court's attention to Section 10 of the Act, the pertinent parts of which are quoted as follows:

"Sec. 10(a) The Board is empowered, as here-

inafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. * * *

* * * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practices, * * *.

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * *

The findings of the Board with respect to questions of fact if supported by substantial evidence

on the record considered as a whole shall be conclusive. * * * "(Italics ours).

We have already pointed out that there was only one fact within the knowledge of the Company which could have furnished *reasonable grounds* to lead it to believe that Eck's membership in the Union was terminated for reasons other than his failure to tender periodic dues; and that the single fact was the monthly deduction of $1.50 from Eck's earnings pursuant to his written request (R. 234). Does that single fact constitute *substantial evidence on the record* within the meaning of Section 10(e) of the Act? We think not.

It must be kept in mind that Eck's request that the Company deduct $1.50 (and certain assessments which are not in issue) and pay same to the Union did not in any way indicate that such sum represented his entire dues obligation to the Union. This fact, together with the facts that (1) the Union certified that Eck was delinquent in the payment of his dues, and (2) Eck did not at any time protest to the Company that he disputed the Union's certification, would negative any inference that the Company had *reasonable grounds* for believing that Eck's membership in the Union had been terminated for reasons other than his failure to tender periodic dues.

In *Universal Camera Corporation vs. National Labor Relations Board*, 340 U. S. 474, this Court ruled that substantiality of evidence must take into account whatever in the record detracts from its weight. Assuming, only for the purpose of discussion, that the fact of monthly deductions could be termed as "substantial evidence on the record", certainly the Union's certification of Eck's delinquency and the fact that he failed to protest to the Company would considerably detract from its weight to render it no greater than a scintilla of evidence, and therefore insufficient to support the Board's findings.

This Court, in *National Labor Relations Board vs. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 300, has said that substantial evidence "must do more than create a suspicion of the existence of the fact to be established—it must be enough to justify, if trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury". In the case at bar, the fact that the Company deducted $1.50 each month and paid such amounts to the Union in accordance with Eck's request did no more than create a suspicion that the Company had grounds for believing that Eck's dues obligations to the Union were fully paid. There is absolutely nothing in the record to show that the Company had any knowledge as to the exact amount of the periodic dues uniformly required as a condition of retaining membership in the Union. Without such knowledge, the mere fact that the Company made monthly deductions from Eck's earnings and paid same to the Union, standing alone, cannot amount to "substantial evidence on the record" within the purview of Sec. 10(e) of the Act. There being no other evidence which would lead to any other conclusion, the Board's decision and order is contrary to law and its petition for enforcement of its order should have been denied by the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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IV.

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